
OPINION OF THE PUBLIC ACCESS COUNSELOR

ANTONIO PHILLIPS,
Complainant,

v.

ALLEN SUPERIOR COURT,
Respondent.

Formal Complaint No.
18-FC-125

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging that the Allen Superior Court violated the Access to Public Records Act.¹ Court Executive John McGauley filed an answer to the complaint on behalf of the court. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on October 3, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute between an offender in the Indiana Department of Correction and the Allen Superior Court over a public records request for an audio recording of two court proceedings.

Around July 10, 2018, Antonio Phillips (“Complainant”) requested a copy of an audio recording from two 2008 hearings. Phillips claims the Court did not respond to the request. As a result, Phillips filed a formal complaint with this Office.

Notably, a prior order from December 2013 had denied the Complainant a copy. Furthermore, Phillips contends that “someone at the courthouse” recently advised a member of his family that only a transcript would be provided as opposed to a copy of the audio recording.

The Court denies Phillips’ claim that it violated APRA because it provided him a copy of the certified transcript of proceedings for which he seeks the source audio. The Court contends that the Indiana Code, Indiana Court Rules, and case law support its argument that no APRA violation occurred in this case.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of

the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1.

The Allen Superior Court is a public agency for purposes of APRA; and therefore, is subject to the Act’s requirements. *See* Ind. Code § 5-14-3-2(q). Thus, unless an exception applies, any person has the right to inspect and copy the court’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Audio Recordings of Court Proceedings

The Allen Superior Court does not contend that the audio recording requested does not exist, only that it provided Phillips a transcript of the proceedings; and thus, fulfilling its duty under the law. The court adopts the position presented by the Indiana Attorney General’s Office in its appellate brief in the case *Williams v. Allen Superior Court, et al.* (02A03-1708-MI-1913). Notably, on November 15, 2018, the Indiana Court of Appeals issued a memorandum decision in the case.

Although not regarded as precedent, my interpretation of the memorandum decision in *Williams* is that a Court has

satisfied its requirements under APRA if an audio recording does not exist (and is not required to be retained), and a transcript is provided in its stead.

A court recording is mutually exclusive from a transcript and has vastly different characteristics. Tone, inflection and pacing can all be extrapolated from an audio recording wherein a transcript only dictates the words spoken.

Moreover, a public agency that maintains its public records in electronic form must make reasonable efforts to provide the record in that form. *See* Ind. Code § 5-14-3-3(d). Furthermore, the legislature added a provision in that same section in 2018 mandating: A public agency shall provide an electronic copy or a paper copy of a public record, at the option of the person making the request for the public record. *See* Ind. Code § 5-14-3-3(j).

Therefore, if both a transcript and an audio recording co-exist, the requester is able to choose in which format he or she receives the data. If only a transcript exists and the audio recording has been lawfully destroyed, so be it – only the transcript need be provided.

The Court also cites to Administrative Court Rule 10 to justify the nondisclosure of the audio recording to Department of Correction inmates. Administrative Court Rule 10 governs the public records in the custody of the Court, i.e., the originals. The Court must take measures to preserve the integrity of those original records. Administrative Rule 10 does not speak to disseminated copies.

To the extent that Rule 2.17 of the Indiana Rule of Judicial Conduct applies, this rule does not prohibit the release of the

records – only broadcast thereof during the pendency of a case or immediately adjacent thereto.

To wit, the Indiana Supreme Court has issued a Handbook on Public Access.² Consider the following:

Recordings of court proceedings made by court reporters are public records regardless of whether they are produced on [electronic devices].

...

Management of access does not justify a denial of access to the public record. The public has the right to obtain the record within a reasonable period of time after making the request.

Providing a copy of the [audio recordings of court proceedings] is probably the most efficient and least time consuming to provide public access

(emphasis added.) There is no explicit exception for Department of Correction inmates, nor has the Court indicated an imminent threat of broadcast by the inmate Complainant from inside the prison that would jeopardize the integrity of the administration of justice.

² Public Access to Court Records Handbook, 2018 Ed., Indiana Supreme Court, Indiana Office of Court Services, pp. 47-48.

CONCLUSION

To the extent an audio recording still exists of the proceedings in question, it should be provided to the Complainant. If the recordings do not exist, the transcript is sufficient to satisfy the requirements of the Access to Public Records Act and the Administrative Court Rules.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor